

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, No: 1:11cr259

vs.

JAMES ANDREW KOHN,

Defendant.

Before

THE HONORABLE JANET NEFF,  
U.S. District Judge  
Grand Rapids, Michigan  
June 18, 2012  
Sentencing Proceedings

APPEARANCES:

MR. DONALD DAVIS, U.S. ATTORNEY  
By: MS. JULIE ANN WOODS  
The Law Building  
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616-456-2404

On behalf of the Plaintiff;

FEDERAL PUBLIC DEFENDERS  
By: MR. RICHARD D. STROBA  
50 Louis Street NW  
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On behalf of the Defendant.

REPORTED BY: MS. KATHY J. ANDERSON, RPR, FCRR

June 18, 2012

PROCEEDINGS, 11:07 a.m.

THE CLERK: All rise, please. This court is now in session. Please be seated.

THE COURT: Good morning, everybody.

MR. STROBA: Good morning, Your Honor.

MS. WOODS: Good morning, Your Honor.

THE COURT: This is the date and time set for sentencing in case number 1:11cr259, the United States of America versus James Andrew Kohn. Counsel, may I please have introductions and, I'm sorry, appearances and introductions.

MS. WOODS: Julie Woods on behalf of the United States Attorney's office. Seated to my right is Special Agent Timothy Kruithof. I did spell his last name for your court reporter earlier.

MR. STROBA: Good morning, Your Honor, Richard Stroba on behalf of the defendant, Mr. Kohn. Mr. Kohn is also present.

THE COURT: Mr. Kohn entered a guilty plea to Count 1 of a two-count indictment on March 12, 2012, before Magistrate Judge Ellen Carmody to the offense of sexual exploitation of a child, which is contrary to 18 U.S.C. 2251(a), and 2251(e). I should also mention that present in the courtroom this morning is United States Probation Officer Lori Hodel.

1           The potential penalties in this case are a  
2           mandatory minimum 15 years imprisonment to a maximum of  
3           30 years imprisonment, and/or a \$250,000 fine.

4           The offense behavior can be fairly summarized as  
5           follows: The defendant produced digital images of himself  
6           engaging in sexual intercourse with a minor female child who  
7           was also his daughter.

8           And it is the, if I understand correctly, the  
9           production of this child pornography that's the behavior at  
10          issue here.

11          The report and recommendation of the magistrate  
12          judge was adopted on March 30, 2012. There is a plea  
13          agreement which I accept at this time and I find that the  
14          charge pled to adequately reflects the seriousness of  
15          Mr. Kohn's actual offense behavior.

16          There is a presentence report. Ms. Woods, does the  
17          government have any errors, additions or objections to the  
18          facts as recited in the report?

19                MS. WOODS: No, Your Honor. Thank you.

20                THE COURT: Thank you. Mr. Stroba on behalf of the  
21          defendant.

22                MR. STROBA: We have none, Your Honor.

23                THE COURT: Thank you. Mr. Kohn, have you read the  
24          presentence report?

25                THE DEFENDANT: Yes, Your Honor, I have.

1 THE COURT: Have you thoroughly and carefully  
2 discussed it with Mr. Stroba?

3 THE DEFENDANT: Yes, I have.

4 THE COURT: And is there anything about it that as  
5 you sit here in the courtroom this morning you either don't  
6 understand or you still have questions about?

7 THE DEFENDANT: No, there is not.

8 THE COURT: Have you been satisfied with the  
9 representation that Mr. Stroba has provided you?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Very well. The presentence report  
12 contains a calculation of the advisory guidelines calculations  
13 as follows: The offense level is calculated at 46, but 43 is  
14 the maximum, I guess. The Criminal History Category is  
15 calculated at 1 based on zero criminal history points. The  
16 defendant is therefore in Zone D of the grid where the  
17 advisory range is actually 360 months to life, although, as  
18 indicated, the statutory maximum here is 360 months.  
19 Supervised release range is five years to life. The fine  
20 range 25,000 to \$250,000, restitution as determined by the  
21 probation officer is \$5,000 which is calculated based on  
22 continuing counseling expenses for the young victim, and there  
23 is a mandatory special assessment of \$100.

24 There are no objections to scoring, and my scoring  
25 is the same as, the same as Ms. Hodel's. And I must say I did

1 spend quite a lot of time reviewing the scoring that is in  
2 this case because the numbers are so significant. But in any  
3 event, my scoring indicates offense level 43, Criminal History  
4 Category 1, Zone D of the grid, because of the statutory  
5 maximum the advisory range for custody is 360 months.  
6 Supervised release range is five years to life, fine range is  
7 25,000 to \$250,000, restitution at \$5,000 and \$100 special  
8 assessment.

9 There were no requests for departures under the  
10 guidelines, is that correct, Ms. Woods, on behalf of the  
11 government?

12 MS. WOODS: That is correct, Your Honor. Thank  
13 you.

14 THE COURT: Mr. Stroba.

15 MR. STROBA: It is correct, Your Honor.

16 THE COURT: Are you then -- does everybody agree  
17 with me then that the following is accurate and correctly  
18 calculated: A Total Offense Level 43, Criminal History  
19 Category 1, guideline range for custody 360 months, supervised  
20 release five years to life, and fine 25,000 to 250,000.  
21 Ms. Woods.

22 MS. WOODS: Yes, Your Honor, the government agrees.

23 THE COURT: Thank you.

24 MR. STROBA: I agree as well, Your Honor.

25 THE COURT: Thank you. Mr. Stroba, are you ready

1 for your allocution?

2 MR. STROBA: I am, Your Honor. Thank you, Your  
3 Honor. If it please the Court.

4 We do believe that the presentence investigation  
5 report is complete and accurate, and we thank Ms. Hodel for  
6 her work in regard to this matter.

7 We do incorporate by reference the sentencing  
8 memorandum and the attachments that we had along with our  
9 motion for downward variance in this matter.

10 In regard to the comments on sentencing, I think I  
11 only have a few things to add to the material that we supplied  
12 and the arguments we supplied to the Court in the sentencing  
13 memorandum.

14 I take to heart and my first remark was going to be  
15 similar to what the Court started with, which was it should be  
16 remembered that although the Court is called upon to sentence  
17 a defendant for acts that include behavior that is wrong by  
18 any measure, the crime committed here is the photography of  
19 that act, not the acts themselves, and not any form of use of  
20 the image; in other words, there was no distribution, there  
21 was no profit motive involved here.

22 The criminal sexual conduct that underlies this has  
23 been addressed and quite severely by the state authorities in  
24 the state court prosecution that rendered a sentence of  
25 225 months to 600 months.

1           This Court should sentence the defendant for the  
2           federal crime which is the creating of the digital images.  
3           There apparently was no component of distribution, no  
4           component of profiteering, or any other added conduct that  
5           would make this more egregious than just what occurred as to  
6           the production of the images.

7           And I think that that's significant. And there are  
8           some other things that are significant as well.

9           It would appear to me that the sentencing  
10          guidelines in this case really draw little distinction between  
11          offenders in the area of child exploitation as it is in this  
12          case. The defendant, as the Court has noted, basically maxes  
13          out under the guidelines and maxes out under the statutory top  
14          end as a guideline range, virtually the same category as a  
15          commercial producer. The offense level is so high that it's  
16          off the charts.

17          The defendant, who is a middle-aged man with no  
18          criminal history, whose offense seems limited to the two  
19          occasions as described in the presentence report, who stopped  
20          his conduct when he was confronted, and that was even a  
21          significant period of time before there was actually any  
22          intervention by authorities, by the state authorities, or that  
23          this conduct was ever reported to state authorities.

24          This individual should not be treated in the same  
25          class as somebody who might be considered a commercial

1 producer who does so with a much more serious and wrongful  
2 ulterior motive.

3 I also note that the government's memorandum in  
4 this matter describes some of the content from the victim  
5 statement to state authorities and/or the state sentencing  
6 court, but I think the citations were a bit selective, and I  
7 think it's worthy of note, as indicated from what I saw of the  
8 state court victim impact statement, that the victim in this  
9 case, as you might expect because she is the daughter of the  
10 defendant, did not oppose the fact that there was plea  
11 bargaining in the state court case, did not think that the  
12 defendant should be sent to prison.

13 THE COURT: She is a kid.

14 MR. STROBA: I understand that, Your Honor. But if  
15 we are going to consider the bad things that she said, I think  
16 it's worthy of note, and Mr. Kohn has a right to have it all  
17 clearly on the record as well. And by that I mean in the  
18 government's memorandum, they talked about things she said  
19 about how she felt, and I think that that's true. It's also  
20 relevant to I think Mr. Kohn's statement that he may make to  
21 the Court regarding the sorrow with which he feels for putting  
22 his daughter in this situation at all.

23 And the only other thing that I was going to cite  
24 from that victim impact statement was is that she thought he  
25 certainly would need counseling, as she thought she would need



1 counseling, but she thought that he didn't need to go to  
2 prison. And I think she clearly indicated a difference  
3 between understanding jail and prison because she was offered  
4 two different options.

5 And I will state, and I understand she is a child,  
6 and that's what brings us here, by and large, but nonetheless,  
7 there is still that bond that was there. That's now gone.  
8 Mr. Kohn can never restore it. His parental rights have been  
9 appropriately terminated. But, nonetheless, it's a relevant  
10 consideration. And if the Court is going to consider part of  
11 the victim's situation, I think she should, the Court should  
12 consider it all.

13 We do cite in our memorandum the very low  
14 likelihood of recidivism by this offender, and offenders of  
15 the categories which fit this defendant.

16 As the Court has to consider both deterrence and  
17 protection of the public, I think the low rate of recidivism  
18 is certainly something the Court can consider in determining  
19 what is a sufficient but not greater than necessary sentence.

20 I note that since the defendant will not be  
21 eligible for so-called good time in the state prison system  
22 because the 225 months that he got, he will serve the  
23 225 months before he is eligible to be considered for parole.

24 That doesn't mean he is going to parole in just  
25 18 years and nine months. That means he has to begin the

1 parole process shortly before that and then convince the  
2 parole board that he should be allowed to be released even on  
3 terms and conditions. And I would note based upon my  
4 experience in the state court anyway, is that the parole did  
5 not always occur, particularly for sex offenders, the first  
6 time around or even the second time around.

7 So when this gentleman ends up getting out of  
8 prison on parole, he is going to be 66 at least, and probably  
9 older.

10 We do ask the Court to recommend to the Bureau of  
11 Prisons, and this is somewhat speculative as to whether or not  
12 Mr. Kohn will ever get to the Bureau of Prisons if, as I  
13 understand how the sentencing process is going to work because  
14 he will be taken back to the state system, we would request  
15 mental health counseling and assessment and counseling as  
16 appropriate, educational and vocational opportunities  
17 consistent with his abilities.

18 As I noted in the memorandum, he has always worked.  
19 He has a good record that way. That's not unusual, I guess,  
20 for individuals in his situation because everything else would  
21 indicate about his life that it has been relatively  
22 straightforward and upright.

23 We do ask specifically that the Court render a  
24 concurrent sentence, that being consistent with the guidelines  
25 and appropriate here. I do have, if the Court is interested

1 or needs some very specific language as I understand it that  
2 the Bureau of Prisons needs if the Court is going to render a  
3 concurrent sentence, but I would be happy to supply that to  
4 your staff if that's necessary.

5 We have run into that issue before with the Bureau  
6 of Prisons in terms of making sure that they are trying to  
7 fulfill --

8 THE COURT: Yeah, we usually get a letter from  
9 somebody telling us we need more specific language.

10 MR. STROBA: We have determined four separate  
11 sentences that can be used that seem to take that situation  
12 away.

13 THE COURT: Good. That's helpful.

14 MR. STROBA: A sentence that is sufficient but not  
15 greater than necessary would be a concurrent sentence. And I  
16 also think one that is significantly less than the guideline  
17 calls for would serve the purposes of sentencing under  
18 3553(a). He is going to be punished. He already has been  
19 punished and he started serving that sentence, a very short  
20 period of it, before he was brought back. He is probably  
21 going to serve that in the state court. And the question  
22 ultimately is what is sufficient. We know that the criminal  
23 sexual conduct has been dealt with harshly, as I said; to what  
24 extent this Court needs to add punishment to that or to punish  
25 what conduct he did here I think is less than the guidelines.

1 Does the Court have any questions?

2 THE COURT: I don't.

3 MR. STROBA: Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Stroba. Mr. Kohn, I'm  
5 sure you've talked with Mr. Stroba but at this point in time  
6 you have an opportunity to speak in your own behalf and to  
7 tell me anything that you think is important for me to know  
8 other than what he's already said and written on your behalf.  
9 You should know that I have read the transcript of your plea  
10 proceeding, I have read Mr. Stroba's memo, the government's  
11 memo, and various other matters in the file, including the  
12 lengthy presentence report.

13 But if you would like to speak on your own behalf,  
14 please come to the podium with Mr. Stroba.

15 THE DEFENDANT: Your Honor, I would just like to  
16 say that I am truly sorry for putting my daughter in the  
17 position that she is in right now. And if there was any  
18 possible way I could go back and change what happened, I  
19 certainly would do that. I guess that's about all I can say.

20 THE COURT: You know, Mr. Kohn, I have to say that  
21 I struggle to understand these kinds of crimes which, and I  
22 appreciate what Mr. Stroba had to say, that you're here really  
23 specifically for the production of digital images, some of  
24 which I have reviewed.

25 But it's very difficult for anybody who looks at

1       those images, including the law enforcement people, the  
2       probation officer, myself, not to be effected by what's in  
3       those images. And I struggle, as I think many of us do, to  
4       understand how you could get to that place. I really do. And  
5       if there is anything you can do to help me understand that, it  
6       would be good thing.

7               THE DEFENDANT: Your Honor, I, I'm in the same  
8       position. I don't know. I -- there is nothing, there is no  
9       excuse, there is nothing that I can say that is going to make  
10      it right or better.

11             THE COURT: Well, it's not really so much that. I  
12      mean there is nothing you can say under any circumstances that  
13      would make it right. There is no explanation, excuse,  
14      nothing. But what I'm -- what I struggle with is how you get  
15      to the point of doing those kinds of things.

16             THE DEFENDANT: I honestly, I don't know. I do not  
17      know. I wish I had an answer to give you. I just don't.

18             THE COURT: Okay. Thank you for your comments.  
19      You may return to your seat.

20             THE DEFENDANT: Thank you.

21             THE COURT: Ms. Woods.

22             MS. WOODS: May it please the Court.

23             I think Your Honor has summarized pretty much the  
24      way all of us have responded to this case. It's appalling.  
25      It's almost impossible to separate the incest, the rape from

1 the production of the images. 49 images of this man's  
2 daughter being raped by him.

3 It's pretty appalling. It goes past so many taboos  
4 in our society that it reflects a serious shortcoming in this  
5 defendant's ability to control himself and not only behave  
6 within the confines of the law, but to behave within the  
7 confines of a very basic moral premise of our society.

8 This case thank heavens does not involve  
9 distribution. We are just lucky that he didn't put that in a  
10 share folder. But he did create them to keep so that he could  
11 go back to them and look at them the way many of us would look  
12 at pictures of our children when they are little or our  
13 grandchildren when they are little.

14 Only these are pictures of incestuous rape.

15 This defendant needs to be away from society for as  
16 long as possible to protect other children, to protect the  
17 public from this person who can not abide by the law, and  
18 cannot abide by basic moral principles.

19 This case requires a severe sentence, a sentence  
20 that will ensure that he is a very old man when he gets out of  
21 prison. Thank you.

22 THE COURT: Thank you, Ms. Woods. Well, the  
23 guidelines which have been discussed here this morning are  
24 advisory only, but the other side of that is that I do have an  
25 obligation to consider them and to consult them before

1 reaching a sentence which is reflective of my underlying duty  
2 to impose a sentence which is sufficient but not greater than  
3 necessary to comply with the purposes of Section 3553(a).

4 And this is a case in which I think it's really  
5 important to talk about all of the factors, as well as to  
6 discuss the defendant's request for variances.

7 Now, the statute first talks about reviewing the  
8 nature and circumstances of the offense and its seriousness.  
9 And in my view it almost goes without saying that it would be  
10 hard to conjure a more serious offense. The underlying acts  
11 themselves which were photographed exhibit such a tremendous  
12 breach of trust between a parent and a child. The images  
13 reflect infliction of pain and shame and humiliation. And to  
14 be really honest with you, in reviewing this file, both the  
15 plea transcript and the presentence report, I'm really not  
16 convinced, Mr. Kohn, that you truly understand how serious  
17 your actions were.

18 Your plea colloquy was very, very brief. When -- I  
19 think it was Judge Carmody, or Judge Scoville.

20 MR. STROBA: Judge Carmody, Your Honor.

21 THE COURT: Thank you. When Judge Carmody said I  
22 would like you to tell me in your own words what you did that  
23 makes you guilty of the crime to which you just pled guilty,  
24 you said simply I took photographs of a female under 18 years  
25 old having sex. Didn't even mention that it was your

1 daughter. I mean I can see where maybe that would be really  
2 painful to say that, but how could you leave that out in  
3 saying what you did. Because it really, at least in my view,  
4 makes the offense that much more serious and requires your  
5 understanding of that. And I don't think you really do.

6 In any event, short of taking life, I think that  
7 this crime on a scale of one to ten has got to be right at the  
8 top end.

9 The statute then requires a review of the history  
10 and characteristics of the defendant, and Mr. Kohn is a  
11 48-year-old man who achieved his GED on his own. He has had  
12 some college. He's been twice married. His second wife, who  
13 is the one who reported this crime, is now in the process of  
14 divorcing him, although she herself certainly is not exactly a  
15 paragon of virtue having known about this offense for  
16 something like a year before she reported it, and as I  
17 understand it, she has since gone to jail for a drug offense  
18 of some description. Mr. Kohn's daughter is fortunate to have  
19 grandparents who apparently care a great deal about her and  
20 have been taking care of her. And I think at least based on  
21 what I read, she is doing pretty well, and we hope that she  
22 will continue to have the benefit of her grandparents and to  
23 continue in her counseling and progression to try to deal with  
24 what has happened to her.

25 As noted by Mr. Stroba, Mr. Kohn's parental rights



1 have been terminated, and as I understand it, also as to the  
2 mother.

3 Mr. Kohn does have a fairly consistent work history  
4 which is certainly important.

5 The purposes of sentencing are laid out in the  
6 statute. The first two talk about the retribution end of  
7 things which are to provide punishment and to promote respect  
8 for the law. And here I think the emphasis must be on  
9 punishment because obviously of the very serious nature of the  
10 offense. Deterrence and protection of the public are the  
11 second or the third and fourth purposes of sentencing, and I'm  
12 not sure that Ms. Woods is correct that those two factors are  
13 all that high on the list of goals to be really emphasized  
14 here. At least as far as we know, this behavior on Mr. Kohn's  
15 part is somewhat aberrant, as awful as it is, and so I'm not  
16 sure we need to be concerned about deterrence so much.

17 But the statute also says we should look to  
18 rehabilitation also, although, the Supreme Court and the Sixth  
19 Circuit have given us mixed messages on that issue. But I  
20 don't think there is any question that incarceration should  
21 address in this case rehabilitation.

22 So the question is whether the guidelines are  
23 properly reflective of the statutory factors. Is this a  
24 heartland case. I don't see how photographing sex with your  
25 daughter can ever be a heartland case.

1                   And so pursuant to the Sentencing Reform Act of  
2                   1984, it's my sentence -- well, let me go back a minute. I  
3                   want to talk a minute about Mr. Stroba's request for variance.

4                   As I said, I do agree to some extent that  
5                   deterrence is not such a major factor here. Mr. Stroba's  
6                   brief suggests that the state sentence will provide adequate  
7                   deterrence. He points to the lack of criminal history, he  
8                   argues that there is a low risk of recidivism. I'm really not  
9                   sure how we can even judge that. Mr. Stroba's brief does make  
10                  some interesting statistical arguments, and he makes the  
11                  argument that the guidelines don't distinguish between those  
12                  who commit just a few of these types of offenses and those who  
13                  commit many, those who do this kind of activity for financial  
14                  gain, and he also then talks about the overlapping application  
15                  of offense characteristics with the state crimes and says that  
16                  in the end the guidelines overstate the seriousness of this  
17                  offense. As to the latter, as I said, I just don't think  
18                  that's even possible. And as I have said in previous cases, I  
19                  do think that in scoring these offenses we do, the guidelines  
20                  do create an awful lot of characteristics which are applicable  
21                  and which do result in very high offense levels as we see  
22                  here, but in this case I think it's really hard to disagree  
23                  with the application of those offense characteristics. Four  
24                  offense levels for an offense involving a minor who is not yet  
25                  12 years old, two offense levels for commission of a sexual

1 act or sexual conduct in the images, four offense levels for  
2 sadistic or masochistic conduct depicted or depictions of  
3 violence in the images, and here without being too terribly  
4 graphic about the images that I observed, it's hard to argue  
5 that that specific offense characteristic should not apply  
6 when -- well, if this is ever reviewed the reviewing court  
7 can look at the images for themselves.

8 And then finally, the specific offense  
9 characteristic that the defendant was a parent, which is two  
10 offense levels. I really wonder whether that shouldn't even  
11 be more because of the terrible breach of trust that is  
12 involved.

13 So in terms of whether the guidelines overstate and  
14 the characteristics overlap with the state crimes, I think  
15 there is an overlap, certainly, but I don't think, I just  
16 don't think it's possible to overstate the seriousness of this  
17 offense.

18 And, again, you know, Mr. Stroba's brief as always  
19 is well done, and I found his discussion of some of the  
20 statistical issues to be very, very helpful in putting some  
21 things in perspective, particularly with regard to the issues  
22 of recidivism and as relates to the offense itself, and the  
23 age of the defendant, and so forth, the education. And so, as  
24 I say, I am somewhat convinced that recidivism is not the real  
25 major focus of -- it shouldn't be in this particular case,

1           should not be the major focus of the sentencing calculus.

2                       And even taking into account all of the arguments  
3 made by counsel on behalf of Mr. Kohn, I still think that the  
4 seriousness of the offense and the need to punish require a, a  
5 sentence at the high end of the guidelines.

6                       And so pursuant to the Sentencing Reform Act of  
7 1984, it's my sentence that the defendant serve 360 months  
8 incarceration, and that this term be concurrent with the time  
9 served in Barry County case docket number 11-100211-FC-M; that  
10 sentence is apparently 18 years nine months to 50 years. And  
11 based on my experience with state court parole decision  
12 making, I think Mr. Stroba is probably right, that even after  
13 Mr. Kohn serves the minimum of that indeterminant sentence the  
14 chances are pretty good that he will not be out on parole  
15 right away, although who knows what will happen in 18 years.

16                      In any event, when he comes into federal custody,  
17 and if he does serve the time indicated, then the sentence  
18 will, my sentence includes a five-year term of supervised  
19 release subject to the standard conditions of reporting and  
20 remaining law abiding. Mr. Stroba and Mr. Kohn have reviewed  
21 the order regarding additional sentencing conditions, and both  
22 have signed it indicating that they have read it and  
23 understand those conditions. And I'm signing the order right  
24 now for entry.

25                      The fine in this case is waived. I do order in the

1 additional sentencing conditions to include a restitution  
2 amount of \$5,000 which is based on the estimated cost of  
3 long-term counseling for Mr. Kohn's daughter. Interest on the  
4 restitution is waived.

5 There is a mandatory special assessment of \$100.  
6 The following recommendations will be made to the Bureau of  
7 Prisons: First for mental health and sex offender evaluation  
8 and treatment. And second, for vocational and/or educational  
9 programming.

10 Ms. Woods, does the government move to dismiss  
11 Count 2 of the indictment?

12 MS. WOODS: Yes, Your Honor, I so move.

13 THE COURT: The motion is granted. Are there any  
14 legal objections to the sentence imposed other than are  
15 already on the record, Ms. Woods?

16 MS. WOODS: No, Your Honor. Thank you.

17 THE COURT: Thank you. Mr. Stroba.

18 MR. STROBA: Your Honor, there is one objection  
19 that I would lodge. It's regarding the Court's comments about  
20 the plea taking proceeding, and the questions posed by the  
21 judge and the answers provided by my client. I think one  
22 needs to remember that the purpose of the plea taking  
23 proceeding is to establish the elements of the crime that has  
24 been charged, and in this case the answers that were provided  
25 by my client were directly related to the elements of the

1 crime and followed the statement of the crime as indicated by  
2 government counsel. Judge Carmody's procedures are usually to  
3 have the government counsel indicate on the record the factual  
4 basis and the background for the evidence that would be  
5 produced or would otherwise be used to establish the elements.  
6 I believe that occurred in this case and then my client was  
7 asked to indicate what he did that was the crime in this case.  
8 And so to the extent that any part of the sentence was based  
9 upon the Court's analysis of that transcript, I would object  
10 to that. Thank you.

11 THE COURT: Well, I appreciate your comments,  
12 Mr. Stroba, and it gives me an opportunity to perhaps clarify.

13 In my full review of this case, and I think counsel  
14 both know that I do spend a great deal of time reviewing  
15 everything in the file before I come out here, and I always  
16 read the plea transcript because it can be so revelatory, if  
17 that's a word, but here I will say that it was a very small  
18 part of my determination of the sentence in this case, which  
19 is a very lengthy one, obviously. And I weighed so much, I  
20 looked at so much and read so much, and that transcript was a  
21 very, very small part of what played into my decision. But  
22 thank you for your comments.

23 MR. STROBA: Thank you, Your Honor. No other  
24 objections that the Court didn't otherwise address.

25 THE COURT: Thank you very much, Mr. Stroba.

1           Mr. Kohn, I need to talk with you about your right  
2           to appeal in this case. You do have a right to appeal, and  
3           you need to understand two things going forward: First of  
4           all, you'll have 14 days from the time the sentence, the  
5           judgment of sentence is entered to decide whether you want to  
6           appeal and talk to Mr. Stroba about it. And I know he will  
7           very confidently he will lay out your rights in full and tell  
8           you what your options are. But keep in mind that the window  
9           to make that decision is 14 days long. I expect that the  
10          judgment will be entered today or tomorrow. Wednesday at the  
11          very latest. The other thing you need to understand here is  
12          that Mr. Stroba will have a continuing obligation to represent  
13          you if you do decide to appeal. And only at such time as the  
14          Sixth Circuit Court of Appeals relieves him of that duty will  
15          something else happen.

16                 So he is your lawyer. He will continue to be your  
17          lawyer. And I'm sure he will provide you with good counsel  
18          going forward.

19                 Is there anything further that I haven't covered or  
20          have forgotten, Ms. Woods?

21                 MS. WOODS: No, Your Honor. Thank you.

22                 THE COURT: Mr. Stroba.

23                 MR. STROBA: No, Your Honor. Thank you.

24                 THE COURT: Thank you. We are adjourned.

25                 (Proceedings concluded, 11:55 a.m.)

## REPORTER'S CERTIFICATE

I, Kathy J. Anderson, CSR-2573, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Kathy J. Anderson

Kathy J. Anderson, RPR, FCRR

U.S. District Court Reporter

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